



Collection Due Process Hearings 101

2002 IRS Nationwide Tax Forum



Restructuring and Reform Act of 1998

Taxpayers are entitled:

- to same protections in dealing with the IRS as other creditors
- adequate notice of collection activity and
- a meaningful hearing before IRS deprives them of their property



When?

Taxpayer entitled to a hearing before Appeals:

- after Notice of Federal Tax Lien **filed** (IRC § 6320)
- IRC § 6330: After notice of **intent** to levy issued



IRC § 6320

Taxpayer:

- notified of notice of lien within 5 days of its filing
- Must request hearing within 30 days



IRC § 6330

- IRS issues notice of intent to levy and right to hearing
 - Exceptions:
 - Jeopardy levy
 - Levy on state income tax refund
 - Right to a hearing is after levy
- Taxpayer must request hearing within 30 days



Request for a Hearing

- Must be in writing
- Must include:
 - Name, address, daytime telephone number, signature, and date
- Form 12153 or any written request
- **Suspends collection statute**
- **IRS may not levy**
- **Right to judicial review of Appeals determination if requested timely**



Equivalent hearing

- Late request for hearing (more than 30 days)
- Same issues considered
- No collection suspension
- IRS may levy, but generally will not
- No right to judicial review of Appeals decision



Nature of Hearing

- Informal
- By correspondence, telephone, or face-to-face meeting
- With an Appeals or Settlement Officer with no prior involvement in case (unless waived)



What Appeals Considers: The "Big" Three

1. Did IRS follow required procedures?
2. Issues the taxpayer raises
3. Balancing the need for efficient tax collection with the taxpayer's legitimate concerns re its intrusiveness



Sufficiency of Procedures

- IRS Compliance employee documents their correctness to Appeals
- Statutory requirements
- IRS procedural requirements



Issues the Taxpayer May Raise

- Innocent Spouse
- Challenges to the appropriateness of the proposed collection action
- Offers of Collection Alternatives



Challenges to the appropriateness of proposed action

Excludes:

- Moral, religious, constitutional, conscientious objection, or similar grounds.
- Challenges to assessment process, unless separate FOIA request



Collection Alternatives

- Installment Agreements
- Offers In Compromise
- Substitution of other assets
- Posting of a Bond
 - Considered subject to IRS administrative requirements



Underlying Liabilities???

Must consider:

- Innocent spouse
- Self-assessed returns
- Assessments for which no statutory notices were issued



Underlying Liabilities???

Must not consider:

- Liabilities for which taxpayer received statutory notice of deficiency (90-day letter)
- Other opportunity for Appeals consideration
 - Example: Letter proposing trust fund recovery penalty



Issues Precluded

- Issues decided by a court, or raised and considered at a previous CDP hearing or Appeals conference regarding this tax liability, and
- The taxpayer participated meaningfully in such a hearing or proceeding.



Determination Letter

Includes:

- Appeals determination re levy or notice of lien
- Consideration of the “Big Three”
- Explains right to request judicial review in appropriate court within 30 days



Judicial Review

Did Appeals abuse its
discretion in this case?